



OFFICE OF THE
Attorney General
CIVIL RIGHTS DIVISION
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~~XXXXXXXXXXXX~~
ATTORNEY GENERAL

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April 27, 1978

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ARIZONA ATTORNEY GENERAL

John C. Gabroy, Esq.
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111 West Congress Street
Tucson, AZ. 85701

Re: 78-80 (R78-110)

Dear Mr. Gabroy:

In reference to your letter of April 11, 1978 regarding the Arizona Civil Rights Division's policy of not permitting respondent's legal counsel to attend an interview/deposition of one of respondent's employees, I hope to clarify the office's position and reasoning.

In accordance with A.R.S. §14-1403(B)(2), counsel of the person appearing for the interview may be present. A lower level employee who does not represent the agency or corporation for which he/she works may be accompanied by his/her private attorney. Respondent employer, however, cannot be represented by counsel at such an interview. There are several reasons for this policy.

1. The investigative process applicable under A.R.S. §14-1481 is non-adversarial in nature. The Arizona Civil Rights Division acts as a fact-finder at this stage and must make an effort to conciliate even when reasonable cause is found to believe a violation of the Civil Rights law(s) has taken place. Due to the non-adversarial nature of the investigation, procedures are less formal than they would be even in administrative hearings (Atchison, Topeka and Santa Fe Railway Co. v. Kansas Commission on Civil Rights, 529 P.2d 666 [1974]).

2. The investigative process has no effect on protected rights. Findings of fact do not result in any deprivation to respondent; without deprivation of a protected liberty or

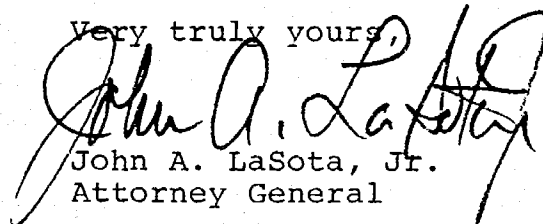
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property right, due process rights (including right to cross-examination) do not attach. A finding of reasonable cause by the Division is not a final adjudication of the rights of the parties, nor is it res judicata in any subsequent court proceedings. No orders are issued by the Division, nor are sanctions available. In the words of Hannah v. Larche, 363 U.S. 420, 80 S.Ct. 1502, 4 L. Ed. 2d 1307 (1960): [the Division] "does not and cannot take any affirmative action which will affect an individual's legal rights." (336 U.S. at 442).

3. The presence of respondents' counsel at an investigative interview or deposition may well have an inhibiting effect upon employees' bringing complaints originally and upon their statements in the course of the investigative interview (Motorola, Inc. v. E.E.O.C., 317 F. Supp. 282 [1969]).

I hope that this explanation will be of assistance to you.

Very truly yours,


John A. LaSota, Jr.
Attorney General

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